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Arizona Corporation Commission

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AZ CORP COMMISSION

BEFORE THE ARIZONA CORPORATION COMMISSION 2005 FEB -2 P 3: 39

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DOCKETED JEFF HATCH-MILLER, ChairmanDOCUMENT CONTROL 3 WILLIAM A. MUNDELL FEB 0 2 2005 4 MARC SPITZER MIKE GLEASON DOCKETED BY KRISTIN K. MAYES DOCKET NO. E-00000A-02-0051 IN THE MATTER OF THE GENERIC 6 PROCEEDING CONCERNING ELECTRIC 7 RESTRUCTURING ISSUES. 8 IN THE MATTER OF ARIZONA PUBLIC DOCKET NO. E-01345A-01-0822 SERVICE COMPANY'S REQUEST FOR A 9 VARIANCE OF CERTAIN REQUIREMENTS) OF A.A.C. R14-2-1606. 10 DOCKET NO. E-00000A-01-0630 IN THE MATTER OF THE GENERIC 11 PROCEEDING CONCERNING THE ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR. 13 IN THE MATTER OF TUCSON ELECTRIC DOCKET NO. E-01933A-02-0069 14 POWER COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC 15 COMPETITION RULES COMPLIANCE DATES. 16 IN THE MATTER OF THE APPLICATION DOCKET NO. E-01933A-98-0471 17 OF TUCSON ELECTRIC POWER COMPANY FOR APPROVAL OF ITS STRANDED COST RECOVERY.

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GALLAGHER & KENNEDY, P.A. 2575 E. CAMELBACK ROAD PHOENIX, ARIZONA 85016-9225 (602) 530-8000 1

COMMISSIONERS

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SUPPLEMENTAL FILING AND REQUEST FOR OFFICIAL NOTICE

The Arizona Electric Power Cooperative, Inc. ("AEPCO") submits this Supplemental Filing and requests that the Administrative Law Judge take Official Notice of the Arizona Court of Appeals' January 25, 2005 mandate in *Phelps Dodge Corporation, et al. v. AEPCO, et al.*,

207 Ariz. 95, 83 P.3d 573 (2004) (the "Electric Competition Rules Appeal"). A copy of the mandate is attached as Exhibit A.

This proceeding was commenced by Procedural Order dated June 18, 2003. In Decision No. 65743, the Commission directed that a hearing be held concerning the continuation of the Arizona Independent Scheduling Administrator ("AISA") and whether Affected Utilities including AEPCO had complied with their responsibilities concerning the AISA under A.A.C. R14-2-1609.C-J. ("Rule 1609"). Staff filed its report in this matter on May 30, 2003 and five other parties including AEPCO filed testimony and participated in the hearing on September 11 and 12, 2003. A recommended opinion and order has not been issued.

One of the issues involved in the Electric Competition Rules Appeal was whether the Commission had the authority to enact Rule 1609. In its opinion, the Court of Appeals stated that, "In sum, we hold that the Commission lacked constitutional or legislative authority to promulgate R14-2-1609 (C) - (J)" and concluded that "these provisions are therefore invalid." *Id.*, 207 Ariz. at 113, 129, 83 P.3d at 591, 607.

In light of the fact that the Court of Appeals opinion declaring the AISA requirements of Rule 1609 to be invalid has become final, AEPCO's position is that this proceeding is now moot.

RESPECTFULLY SUBMITTED this 2nd day of Franky, 2005.

GALLAGHER & KENNEDY, P.A.

Michael M. Grant
Todd C. Wiley

2575 East Camelback Road Phoenix, Arizona 85016-9225

Attorneys for AEPCO

1	ORIGINAL + 21 COPIES of the foregoing
2	Supplemental Filing filed this 212 day of February, 2005, with Docket Control.
3	copies of this Supplemental Filing delivered this 2nd day of February, 2005, to:
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5	Ms. Teena Wolfe Administrative Law Judge
6	Arizona Corporation Commission 1200 West Washington
	Phoenix, Arizona 85007
7	T 0.11
8	Jason Gellman Legal Division
	Arizona Corporation Commission
9	1200 West Washington
10	Phoenix, Arizona 85007
11	COPIES of this Supplemental Filing mailed this
11 12	COPIES of this Supplemental Filing mailed this 2nd day of February, 2005, to each party listed on the June 18, 2003 Procedural Order.
	2nd day of February, 2005, to each party
12	listed on the June 18, 2003 Procedural Order.
12 13	listed on the June 18, 2003 Procedural Order.
12 13 14 15	listed on the June 18, 2003 Procedural Order.
12 13 14	listed on the June 18, 2003 Procedural Order.
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12 13 14 15 16 17 18 19 20 21	listed on the June 18, 2003 Procedural Order.
12 13 14 15 16 17 18 19 20	listed on the June 18, 2003 Procedural Order.

JAN 2 5 2005

IN THE

Court of Appeals

STATE OF ARIZONA **DIVISION ONE**

PHILIP G. URRY, CLERK

PHELPS DODGE CORPORATION; PHELPS DODGE) Division One MORENCI, INC.; PHELPS DODGE, formerly) 1 CA-CV 01-0068 known as CYPRUS CLIMAX METALS CORPORATION and formerly known as CYPRUS SIERRITA CORPORATION and formerly known as CYPRUS BAGDAD COPPER) CV1997-03748 CORPORATION and formerly known as CYPRUS MINERAL PARK CORPORATION; AJO IMPROVEMENT COMPANY; MORENCI WATER & ELECTRIC COMPANY; ASARCO INCORPORATED;) ARIZONA MINING ASSOCIATION; ARIZONA ASSOCIATION OF INDUSTRIES and ARIZONANS) FOR ELECTRIC CHOICE AND COMPETITION (collectively "AECC"),

> Intervenors-Appellants, Cross Appellees,

RESIDENTIAL UTILITY CONSUMER OFFICE,

Intervenor-Appellant,

THE ARIZONA CORPORATION COMMISSION, an) agency of the State of Arizona,

> Defendant-Appellant, Cross Appellee,

ARIZONA ELECTRIC POWER COOPERATIVE, INC.; DUNCAN VALLEY ELECTRIC COOPERATIVE, INC.; GRAHAM COUNTY ELECTRIC COOPERATIVE, INC.; SULPHUR SPRINGS VALLEY ELECTRIC COOPERATIVE, INC.; and TRICO ELECTRIC COOPERATIVE, INC.

Plaintiffs-Appellees, Cross Appellants,

ARIZONA CONSUMERS COUNCIL,

Plaintiff-Cross Appellant.

) Court of Appeals

) Maricopa County) Superior Court

Page two 1 CA-CV01-0068

MANDATE

TO: The Honorable Maricopa County Superior Court, Arizona in relation to Cause No. CV1997-03748.

GREETING: The above cause was presented in your Court and was brought before Division One of the Court of Appeals of the State of Arizona in the manner prescribed by law. This Court rendered its OPINION and caused the same to be filed on January 27, 2004.

The motion for reconsideration was denied and notice thereof was given on . A petition for review was filed. The record was forwarded to the Arizona Supreme Court. By order, dated January 4, 2005, the Arizona Supreme Court denied the petition for review. Arizona Supreme Court No. T-01-0001-CV.

NOW, THEREFORE, YOU ARE COMMANDED that such proceedings be had in said cause as shall be required to comply with the decision of this court, a copy of the OPINION being attached hereto.

Plaintiff-Cross Appellant Arizona Consumers Council

COSTS: \$349.46 ATTORNEY'S FEES: \$2,250.00

IT IS ORDERED that the original of the foregoing MANDATE and a copy of the OPINION of the Court were mailed to the Clerk of Maricopa County Superior Court, Arizona on January 25, 2005. A copy of the MANDATE and OPINION was mailed to the Honorable Colin F Campbell, Presiding Judge, and a copy of the MANDATE was mailed on said day to each party appearing or the attorneys of record.

(SEAL)

PHILIP G. URRY, CLERK

By Serry Tar Deputy Clerk